

## Background

The development of Emergency Action Plans (EAPs) is recommended by the Federal Emergency Management Agency for High and Significant Hazard Impoundments, but is not a regulatory requirement. For those impoundments regulated by the Mine Safety and Health Administration, an EAP conforming to FEMA standards is also recommended by that agency but is not required. MSHA Bulletin P94-18.

At the state level, owners of impoundments (covering coal waste structures as well as sedimentation ponds) are required to implement emergency procedures “formulated for public protection and remedial action” if inspection discloses that a “potential hazard exists”. 405 KAR 16:100(11). Clearly, once a hazard exists, it is late to begin to formulate an emergency action plan.

In order to improve emergency preparedness, this resolution proposes the common sense incorporation as a regulatory requirement for high and significant hazard impoundments of the obligation to *develop and submit* to the Division of Water of an Emergency Action Plan conforming to the Federal Emergency Management Agency guidelines.

The Federal Guidelines for Dam Safety, issued by the Federal Emergency Management Agency, provide guidance on the development and implementation of EAPs. Impoundments are classified by FEMA as High, Significant or Low Hazard, depending on the potential for loss of life and severity of economic, property or other loss.

The Division of Water, which is the agency with regulatory jurisdiction over all dams in the Commonwealth, is in the process of revising existing regulations, and has obtained FEMA funding for that purpose. The enabling statute, KRS Chapter 151, provides the agency with broad regulatory power over dams and reservoirs, however it is advisable to provide some legislative guidance in order that the regulation be promptly developed by the agency.

Proposed language for a joint resolution follows:

*WHEREAS, there exist numerous impoundments in this Commonwealth that are classified as high or significant hazard structures, the failure of which could pose a hazard to life or of serious economic or property loss; and*

*WHEREAS, the Federal Emergency Management Agency has published “Emergency Action Planning Guidelines for Dams”, which guidelines define the need and provide guidance for preparation and implementation of Emergency Action Plans (EAPs) for such high or significant hazard impoundments; and*

*WHEREAS, according to the most recent report of the Federal Emergency Management Agency to Congress under the National Dam Safety Program Act, only 1% of state-regulated high- and significant-hazard potential dams in Kentucky have developed EAPs; and*

*WHEREAS, the development of EAPs has been recommended by the Mine Safety and Health Administration for coal mine waste impoundments since 1994; and*

*WHEREAS, the Environmental and Public Protection Cabinet has enabling authority pursuant to KRS 151.125 to develop after notice and comment such regulations as are deemed necessary or useful for the safe construction, enlargement, repair, alteration, maintenance and operation of dams or reservoirs, which authority is broad enough to encompass a requirement for development and submission of EAPs to the Division of Water or Division of Surface Mining Reclamation and Enforcement, as applicable under KRS 151.250(3); and*

*WHEREAS, the protection of life and property and maintenance of an appropriate level of emergency preparedness is in the best interests of the owner of high and significant hazard impounding structures and downstream populations alike;*

*THEREFORE, the Environmental and Public Protection Cabinet is directed to promulgate, within ninety (90) days of the effective date of this resolution, regulations requiring development, submission for approval and implementation of Emergency Action Plans for all high and significant hazard impoundments regulated under KRS Chapters 151 and 350. The regulations shall provide a reasonable timeframe for development and submission of such EAPs, consistent with the hazard classification, and shall to the extent possible coordinate submission, review and public notice and comment on EAPs with submission of other permits and certifications by the agency.*